

ASSEMBLY BILL

No. 1740

**Introduced by Committee on Revenue and Taxation (Chavez
(Chair), Laird, Leno, and Simitian)**

March 11, 2003

An act to amend Sections 17041, 17052.6, 17301.3, and 17302 of, and to add Section 19136.11 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1740, as introduced, Committee on Revenue and Taxation. Income taxes: nonresidents.

The Personal Income Tax Law provides for specified treatment and calculations with respect to the taxation of the income of nonresidents and part-year residents.

This bill would provide that in calculating the taxable income of a nonresident or part-year resident, the calculation of prior year items is to be made as if the nonresident or part-year resident, for the period of nonresidency, was a nonresident for all prior years, would correct a cross-reference, and would waive estimated penalties in connection thereto. This bill would also change a cross-reference relating to adjusted gross income in connection with the child and dependent care tax credit.

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17041 of the Revenue and Taxation
2 Code is amended to read:

3 17041. (a) There shall be imposed for each taxable year upon
4 the entire taxable income of every resident of this state who is not
5 a part-year resident, except the head of a household as defined in
6 Section 17042, taxes in the following amounts and at the following
7 rates upon the amount of taxable income computed for the taxable
8 year as if the resident were a resident of this state for the entire
9 taxable year and for all prior taxable years for any carryover items,
10 deferred income, suspended losses, or suspended deductions:

11		
12	If the taxable income is:	The tax is:
13	Not over \$3,650	1% of the taxable income
14	Over \$3,650 but not	
15	over \$8,650	\$36.50 plus 2% of the excess over
16		\$3,650
17	Over \$8,650 but not	
18	over \$13,650	\$136.50 plus 4% of the excess over
19		\$8,650
20	Over \$13,650 but not	
21	over \$18,950	\$336.50 plus 6% of the excess over
22		\$13,650
23	Over \$18,950 but not	
24	over \$23,950	\$654.50 plus 8% of the excess over
25		\$18,950
26	Over \$23,950	\$1,054.50 plus 9.3% of the excess
27		over \$23,950

28
29 (b) (1) There shall be imposed for each taxable year upon the
30 taxable income of every nonresident or part-year resident, except
31 the head of a household as defined in Section 17042, a tax as
32 calculated in paragraph (2).

33 (2) The tax imposed under paragraph (1) shall be calculated by
34 multiplying the "taxable income of a nonresident or part-year
35 resident," as defined in subdivision (i), by a rate (expressed as a

percentage) equal to the tax computed under subdivision (a) on the entire taxable income of the nonresident or part-year resident as if the nonresident or part-year resident were a resident of this state for the taxable year and as if the nonresident or part-year resident were a resident of this state for all prior taxable years for any carryover items, deferred income, suspended losses, or suspended deductions, divided by the amount of that income.

(c) There shall be imposed for each taxable year upon the entire taxable income of every resident of this state who is not a part-year resident for that taxable year, when the resident is the head of a household, as defined in Section 17042, taxes in the following amounts and at the following rates upon the amount of taxable income computed for the taxable year as if the resident were a resident of the state for the entire taxable year and for all prior taxable years for carryover items, deferred income, suspended losses, or suspended deductions:

If the taxable income is:	The tax is:
Not over \$7,300	1% of the taxable income
Over \$7,300 but not over \$17,300	\$73 plus 2% of the excess over \$7,300
Over \$17,300 but not over \$22,300	\$273 plus 4% of the excess over \$17,300
Over \$22,300 but not over \$27,600	\$473 plus 6% of the excess over \$22,300
Over \$27,600 but not over \$32,600	\$791 plus 8% of the excess over \$27,600
Over \$32,600	\$1,191 plus 9.3% of the excess over \$32,600

(d) (1) There shall be imposed for each taxable year upon the taxable income of every nonresident or part-year resident when the nonresident or part-year resident is the head of a household, as defined in Section 17042, a tax as calculated in paragraph (2).

(2) The tax imposed under paragraph (1) shall be calculated by multiplying the “taxable income of a nonresident or part-year

1 resident,” as defined in subdivision (i), by a rate (expressed as a
2 percentage) equal to the tax computed under subdivision ~~(a)~~ (c) on
3 the entire taxable income of the nonresident or part-year resident
4 as if the nonresident or part-year resident were a resident of this
5 state for the taxable year and as if the nonresident or part-year
6 resident were a resident of this state for all prior taxable years for
7 any carryover items, deferred income, suspended losses, or
8 suspended deductions, divided by the amount of that income.

9 (e) There shall be imposed for each taxable year upon the
10 taxable income of every estate, trust, or common trust fund taxes
11 equal to the amount computed under subdivision (a) for an
12 individual having the same amount of taxable income.

13 (f) The tax imposed by this part is not a surtax.

14 (g) (1) Section 1 (g) of the Internal Revenue Code, relating to
15 certain unearned income of minor children taxed as if the parent’s
16 income, shall apply, except as otherwise provided.

17 (2) Section 1(g)(7)(B)(ii)(II) of the Internal Revenue Code,
18 relating to income included on parent’s return, is modified, for
19 purposes of this part, by substituting “1 percent” for “15
20 percent.”

21 (h) For each taxable year beginning on or after January 1, 1988,
22 the Franchise Tax Board shall recompute the income tax brackets
23 prescribed in subdivisions (a) and (c). That computation shall be
24 made as follows:

25 (1) The California Department of Industrial Relations shall
26 transmit annually to the Franchise Tax Board the percentage
27 change in the California Consumer Price Index for all items from
28 June of the prior calendar year to June of the current calendar year,
29 no later than August 1 of the current calendar year.

30 (2) The Franchise Tax Board shall do both of the following:

31 (A) Compute an inflation adjustment factor by adding 100
32 percent to the percentage change figure that is furnished pursuant
33 to paragraph (1) and dividing the result by 100.

34 (B) Multiply the preceding taxable year income tax brackets by
35 the inflation adjustment factor determined in subparagraph (A)
36 and round off the resulting products to the nearest one dollar (\$1).

37 (i) (1) For purposes of this part, the term “taxable income of
38 a nonresident or part-year resident” includes each of the
39 following:

1 (A) For any part of the taxable year during which the taxpayer
2 was a resident of this state (as defined by Section 17014), all items
3 of gross income and all deductions, regardless of source.

4 (B) For any part of the taxable year during which the taxpayer
5 was not a resident of this state, gross income and deductions
6 derived from sources within this state, determined in accordance
7 with Article 9 of Chapter 3 (commencing with Section ~~17031~~
8 *17301* and Chapter 11 (commencing with Section 17951).

9 (2) For purposes of computing “taxable income of a
10 nonresident or part-year resident” under paragraph (1), the
11 amount of any net operating loss sustained in any taxable year
12 during any part of which the taxpayer was not a resident of this
13 state shall be limited to the sum of the following:

14 (A) The amount of the loss attributable to the part of the taxable
15 year in which the taxpayer was a resident.

16 (B) The amount of the loss which, during the part of the taxable
17 year the taxpayer is not a resident, is attributable to California
18 source income and deductions allowable in arriving at taxable
19 income of a nonresident or part-year resident.

20 (3) For purposes of computing “taxable income of a
21 nonresident or part-year resident” under paragraph (1), any
22 carryover items, deferred income, suspended losses, or suspended
23 deductions shall only be includible or allowable to the extent that
24 the carryover item, deferred income, suspended loss, or suspended
25 deduction was derived from sources within this state, *calculated*
26 *as if the nonresident or part-year resident, for the portion of the*
27 *year he or she was a nonresident, had been a nonresident for all*
28 *prior years.*

29 SEC. 2. Section 17052.6 of the Revenue and Taxation Code
30 is amended to read:

31 17052.6. (a) For each taxable year beginning on or after
32 January 1, 2000, there shall be allowed as a credit against the “net
33 tax” (as defined in Section 17039) an amount determined in
34 accordance with Section 21 of the Internal Revenue Code, as
35 modified by the Economic Growth and Tax Relief Reconciliation
36 Act of 2001 (Public Law 107-16), except that the amount of the
37 credit shall be a percentage, as provided in subdivision (b) of the
38 allowable federal credit without taking into account whether there
39 is a federal tax liability.

(b) For the purposes of subdivision (a), the percentage of the allowable federal credit shall be determined as follows:

(1) For taxable years beginning before January 1, 2003:

If the California adjusted gross income is:	The percentage of credit is:
\$40,000 or less	63%
Over \$40,000 but not over \$70,000	53%
Over \$70,000 but not over \$100,000	42%
Over \$100,000	0%

(2) For taxable years beginning on or after January 1, 2003:

If the California adjusted gross income is:	The percentage of credit is:
\$40,000 or less	50%
Over \$40,000 but not over \$70,000	43%
Over \$70,000 but not over \$100,000	34%
Over \$100,000	0%

(c) In the case of a taxpayer whose credits provided under this section exceed the taxpayer's tax liability computed under this part, the excess shall be credited against other amounts due, if any, from the taxpayer and the balance, if any, shall be paid from the Tax Relief and Refund Account and refunded to the taxpayer.

(d) For purposes of this section, ~~California~~ adjusted gross income means ~~California~~ adjusted gross income as computed for purposes of ~~Section 17041~~ *paragraph (2) of subdivision (h) of Section 17024.5*.

(e) The credit authorized by this section shall be limited to ~~those taxpayers who, during the taxable year, maintain a household employment-related expenses~~, within the meaning of ~~Section 21(c)(1)~~ *21* of the Internal Revenue Code, ~~that is located within this state but only for child care services or care provided in this state and only to the extent of earned income (within the meaning of Section 21(d) of the Internal Revenue Code) from sources within this state.~~

(f) For purposes of this section, Section 21(b)(1) of the Internal Revenue Code, relating to a qualifying individual, is modified to additionally provide that a child (as defined in Section 151(c)(3)

of the Internal Revenue Code) shall be treated, for purposes of Section 152 of the Internal Revenue Code (as applicable for purposes of this section), as receiving over one-half of his or her support during the calendar year from the parent having custody for a greater portion of the calendar year, that parent shall be treated as a “custodial parent” (within the meaning of Section 152(e) of the Internal Revenue Code, as applicable for purposes of this section), and the child shall be treated as a qualifying individual under Section 21(b)(1) of the Internal Revenue Code, as applicable for purposes of this section, if both of the following apply:

(1) The child receives over one-half of his or her support during the calendar year from his or her parents who never married each other and who live apart at all times during the last six months of the calendar year.

(2) The child is in the custody of one or both of his or her parents for more than one-half of the calendar year.

(g) The amendments to this section made by the act adding this subdivision shall apply only to taxable years beginning on or after January 1, 2002.

SEC. 3. Section 17301.3 of the Revenue and Taxation Code is amended to read:

17301.3. For purposes of this part, in the case of a nonresident or part-year resident, the term “California adjusted gross income” ~~means~~ *includes each of the following:*

(a) *For any part of the taxable year during which the taxpayer was a resident of this state (as defined by Section 17014), all items of adjusted gross income, regardless of source.*

(b) *For any part of the taxable year during which the taxpayer was not a resident of this state, adjusted gross income for the entire year derived from sources within this state, determined in accordance with Article 9 (commencing with Section 17301) of Chapter 3 and Chapter 11 (commencing with Section 17951) and this article.*

SEC. 4. Section 17302 of the Revenue and Taxation Code is amended to read:

17302. ~~The~~ *In the case of a nonresident or part-year resident, the deduction provided by Section 215 of the Internal Revenue Code, relating to alimony payments, shall not be subtracted from California gross income by a nonresident or by a part-year resident*

1 ~~for any portion of the year during which he or she was not a~~
2 ~~resident of this state~~ *be allowed in computing “taxable income of*
3 *a nonresident or part-year resident” in the same ratio (not to*
4 *exceed 1.00) that California adjusted gross income (as defined in*
5 *Section 17301.3), computed without regard to the alimony*
6 *deduction, bears to total adjusted gross income (as defined in*
7 *Section 17301.4), computed without regard to the alimony*
8 *deduction.*

9 SEC. 5. Section 19136.11 is added to the Revenue and
10 Taxation Code, to read:

11 19136.11. (a) No addition to tax shall be made under Section
12 19136 for any period before April 15, 2003, with respect to any
13 underpayment of an installment for the 2002 taxable year, to the
14 extent that the underpayment was created or increased by any
15 provision of Chapter 920 of the Statutes of 2001.

16 (b) The Franchise Tax Board shall implement this section in a
17 reasonable manner.

18 SEC. 6. This act provides for a tax levy within the meaning of
19 Article IV of the Constitution and shall go into immediate effect.

